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The officers of the COLUMBIA LAW REVIEW for the ensuing year will be: Editor-in-Chief, Russell C. Leffingwell; Secretary, Bridgham Curtis; Business Manager, Philip W. Russell; Treasurer, Emory H. Sykes. The Department of Recent Decisions will be under the management of William E. Baird.

NOTES.

INSURANCE—VENDOR A TRUSTEE OF INSURANCE MONEY FOR VENDEE—SUBROGATION OF INSURER TO RIGHTS OF VENDOR.—*Skinner* v. *Houghton*, 48 Atl., 85. SEE RECENT CASES.—The Court of Appeals of Maryland has just rendered a decision of extreme importance in insurance law, holding, in an executory contract for the sale of insured premises, the vendor after loss is a trustee of the insurance money for the vendee. The Court proceeded on the theory that as equity in other respects had consistently treated the vendor and vendee as trustee and *cestui que trust* (see 1 COLUMBIA LAW REVIEW, 1–10), the same rule should be here applied. In England it is settled that the vendee has no right to the insurance money. *Poole* v. *Adams*, 12 W. R., 683 (1864); *Rayner* v. *Preston*, L. R., 18 Ch. D., 1 (1881). In the U. S. what little authority there is seems to be in favor of case at bar. *King* v. *Preston*, 11 La. Ann., 95 (1856) follows the English rule; but in Pennsylvania and Maryland the opposite doctrine appears firmly established. *Ins. Co.* v. *Updegraff*, 21 Pa. St., 513 (1853); *Reed* v. *Lukens*, 44 Pa. St., 200 (1863); *Hill* v. *Cumberland Valley Co.*, 59 Pa. St., 474 (1869); *Parcell* v. *Grosser*, 109 Pa. St., 617 (1885); *Brewer* v. *Herbert*, 30 Md., 301 (1868); *Ins. Co.* v. *Kelly*, 32 Md., 421 (1870); *Callahan* v. *Linthicum*, 43 Md., 97 (1875), making mortgagee a trustee for mortgagor, *semble*, though subrogating in-

surer to mortgagee's rights where the latter insured for his own benefit only—2 dissenting; *Trust Co.* v. *Boardman*, 149 Mass., 161 (1889), mortgagor and mortgagee. In *Gilbert* v. *Port*, 28 O. St., 276 (1876), there is a long discussion of the topic in general, but the case was eventually decided on another ground and cannot be cited as authority on either side of the proposition in hand; while *Williams* v. *Lilley*, 67 Conn., 50 (1895), was expressly decided on its peculiar facts. There appear to be no other cases, either English or American, touching this point. The question, however, bears on the kindred topic of subrogation of the insurer to the insured's rights for the purchase money against the vendee, the decision in the main case logically requiring a refusal to subrogate. But *cf. Callahan* v. *Linthicum*, *supra*. In England again the opposite doctrine prevails, and subrogation is allowed. *Castellain* v. *Preston*, L. R. 11 Q. B. D., 380 (1883). In the U. S. there is even less authority than on the first point. *King* v. *Ins. Co.*, 7 Cush., 1 (1850), contains a dictum by SHAW, C. J., against allowing subrogation; but Massachusetts does not allow subrogation to a mortgagee. *Trust Co.* v. *Boardman*, *supra*. In *Ætna Ins. Co.* v. *Tyler*, 16 Wend., 385 (1836), there is a dictum contra *King* v. *Ins. Co.*; but *Clinton* v. *Hope Ins. Co.*, 45 N. Y., 454 (1871), expressly reserves the point. See also *Thomas* v. *Montauk Ins. Co.*, 43 Hun, at 223 (1887). *Benjamin* v. *Ins. Co.*, 17 N. Y., 415 (1858), and *Wood* v. *Ins. Co.*, 46 N. Y., 421 (1871), can be distinguished on the ground that the vendee paid the premiums and that the insurance was for his benefit, in accordance with the usual doctrine as to mortgagor and mortgagee. In Maryland, *Ins. Co.* v. *Kelly*, *supra*, is a square decision against subrogation.

The English cases appear to hold the better considered doctrine. As between vendor and vendee, if the loss for accidental destruction of property were held to fall on vendor, making him a trustee of the insurance money would be merely a convenient way of adjusting the loss. This might be one explanation of the Massachusetts doctrine. See *Wells* v. *Calnan*, 107 Mass., 514 (1871), putting loss on vendor though there is authority for distinguishing this case on the ground that it is a decision at law (1 COLUMBIA LAW REVIEW, 10*n*). In Massachusetts, also, there is no subrogation of the insurer to the rights of the mortgagee, *Trust Co.* v. *Boardman*, *supra*, so that the courts in that State are only logically applying their doctrine to the case of vendor and vendee. But in other jurisdictions, including Pennsylvania and Maryland, that there may be subrogation to a mortgagee is generally admitted, also that the loss in an executory contract of sale should fall on the vendee, and that the contract of insurance is one of personal indemnity only and does not run with the land. See cases, *supra*, and *Heller* v. *Bank*, 99 Md., 621 (1899). It is difficult to reconcile with these principles the American decisions on the subjects under discussion. In the latter, the pivotal idea seems to have been a disinclination of the courts to allow the insurer to derive benefit as they thought, at the expense of the vendee. But it must be remembered that

the contract of the insurance company was to indemnify the vendor and him alone; that the premiums paid were compensation for that risk only, and that where he is still entitled to the full purchase price, to deny subrogation is to make the company an insurer for the vendee as well. The objection as between the vendor and vendee, that the vendor is not in equity entitled to more than he bargained for, *i. e.*, to the insurance plus the full purchase price, is met by subrogating the insurer. This likewise does away with the argument of public policy, tending to discourage negligence on the part of the vendor. On the other hand it may be urged that subrogation should be operative only as against a wrongdoer or one guilty of negligence; but there is what looks like strong authority to the contrary in *U. S.* v. *Amer. Tobacco Co.*, 166 U. S., 468 (1896), insurer subrogated to rights of insured against U. S. to be refunded value of revenue stamps accidentally destroyed. Even admitting that premise, the vendee here may be deemed negligent for failing to insure his interest. Finally, it has been said, that where the vendor continues to pay premiums for the *full* value of the property he must be presumed to do so for the benefit of the vendee as well as his own, that therefore he must hold as trustee, and that there can be no subrogation by analogy with the recognized doctrine with regard to mortgagor and mortgagee. But this, as is submitted, is not only a presumption contrary to fact, but is against the express stipulations of the policy. Moreover, it is hard to see how a vendor who, admittedly, alone has the right to sue on a policy which does not run with the land, should, *ipso facto*, by the occurrence of loss become a trustee of the money recovered thereunder. For these reasons the English decisions would appear the sounder and more in conformity with rules well established in the case of mortgagor and mortgagee. [For bare statements on the subject in general, see *May, Insurance* (4th ed., 1900), § 456, 456*a*, 457; *Joyce, Idem* (1897), §§ 3525, 3569; and for short discussions, *May*, pp. 1046–7; *Richards, Idem* (1898), §§ 32, 158 and at p. 294.]

INSURANCE.—FORFEITURE OF POLICY FOR BREACH OF ALIENATION CLAUSE.—The case of *Skinner* v. *Houghton* (See RECENT CASES) also involved the question of what shall constitute a change of interest under the alienation clause of the standard free policy. It is a square decision against what a recent writer has declared to be the rule understood and acted upon by the insurance companies and the legal profession generally. *Richards on Insurance* (1898) §147. Under the old form of policy, collected with decisions in *May on Insurance* (4th ed., 1900), at pp. 575–9, providing against any "change in title or possession," the decisions were uniform that a contract to sell unaccompanied by change of possession was not such a change as to work a forfeiture. *May, supra*, §267; *Joyce on Insurance* (1897), §2284. But the language of the standard policy is broader, covering every "change in interest, title or possession." This was clearly intended to mean every insurable "interest," equit-